

REMARKS

The Office Action mailed June 6, 2005 has been received and reviewed. Claims 1-20, 28, and 29 are in the case. Claims 8-15, 19, and 20 have been withdrawn from consideration. Claims 1-7 and 16-18 stand rejected under 35 U.S.C. §112, second paragraph. Claims 1-7, 28, and 29 stand rejected under 35 U.S.C. §102(b). Claims 1-7, 16-18, 28, and 29 stand rejected under 35 U.S.C. §103(a).

By this amendment, claims 15, 16, and 19-20 have been cancelled, claims 1, 3, 17, 18, 28, and 29 have been amended, and claims 30-32 have been added. Newly added claims 30-32 are directed to the elected species. For the reasons set forth below, claims 1-7, 17, 18, and 28-32 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks is, therefore, respectfully requested.

Rejection of Claims 1-7 and 16-18 Under 35 U.S.C. §112

Claim 1-7 and 16-18 stand rejected under 35 U.S.C. §112, second paragraph, for failure to particularly point out and distinctly claim what Applicant regards as the invention. Specifically, the Office Action finds Applicant's recitation of "extending substantially homogeneously from within" to be indefinite. By this amendment, claims 1 and 3 have been amended remove the objectionable language. Reconsideration is respectfully requested.

Rejection of Claims 1-7, 28, and 29 Under 35 U.S.C. §102(b)

Claim 1-7, 28, and 29 stand rejected under 35 U.S.C. §102(b) as being anticipated by Audretsch.

For a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. Moreover, those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. With respect to Applicant's newly amended claims, Audretsch cannot meet this test.

For example, Applicant's newly amended claim 1 requires "a plurality of anchors, each anchor comprising a suture embedded within and to extend along the back wall and terminating at a first end spaced away from the back wall." Applicant's newly amended claims 28 and 29 recite similar language. Applicant finds no such disclosure in Audretsch. Accordingly, reconsideration is respectfully requested.

Rejection of Claims 1-7, 28, and 29 Under 35 U.S.C. §103(a)

Claims 1-7, 17, 18, 28, and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ross et al. ("Ross") in view of Cloud.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP 2143.) With respect to Applicant's newly amended claims, the combination of Ross and Cloud cannot meet this test.

For example, Applicant's newly amended claim 1 requires "a surgical needle connected to the second end of at least one anchor of the plurality of anchors." Applicant's newly amended claim 28 recites similar language. Applicant finds no such teaching or suggestion in Ross or Cloud. Accordingly, there can be no *prima facie* case of obviousness.

Moreover, an attached surgical needle is antithetical to the implantable device 100 and suture housing 114 taught by Cloud. First, a surgical needle cannot be pulled through the circuitous suture housing 114 taught by Cloud. (See Cloud Figure 1A.) Moreover, a surgical needle is incompatible

with a “pliable” implant designed to “be rolled along any axis so that the diameter of the roll will allow insertion of the patch into a body cavity through a narrow incision typical for laparoscopic or endoscopic surgery.” (Cloud column 6, lines 21-25.) Accordingly, reconsideration is respectfully requested.

With respect to claim 29, the combination of Ross and Cloud does not teach nor suggest any suture securing to a vessel substantially exclusively through embedment, as required by Applicant. Ross only teaches “suture loops 13 attached to the back of the container.” (Ross column 2, lines 38-39.) These “suture loops” are not sutures themselves, but are for receiving the actual suture therethrough. Cloud only teaches a “suture thread that has a proximal end attached to the patch.” (Cloud column 3, lines 54-55, emphasis added.) “Attaching” is a superficial or surface related and is, therefore, antithetical to “embedding.”

Furthermore, the suture housings taught by Cloud do not secure any suture to the implant, as required by Applicant. They only temporarily store sutures so they do not become entangled before being used elsewhere.


Moreover, neither alone nor in combination do Ross and Cloud provide any teaching or suggestion why simply “attaching” a suture may even be inadequate. They do not address the concentrated stress and tearing problems caused when trying to connect a suture to a the pliable, flexible material of which breast implants are necessarily fabricated. Accordingly, the combination cannot support a *prima facie* case of obviousness. Reconsideration is, therefore, respectfully requested.

Should independent claim 1 be allowed, Applicant request that currently withdrawn dependent claims 8-14 be considered in accordance with 37 C.F.R. §1.141(a).

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 6th day of October, 2005.

Respectfully submitted,



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